

Message Text

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R 051720Z JUN 74

FM SECSTATE WASHDC

TO AMCONSUL CAPE TOWN

AMEMBASSY BUENOS AIRES

AMEMBASSY CANBERRA

AMEMBASSY OTTAWA

AMEMBASSY MEXICO

AMEMBASSY PANAMA

AMEMBASSY BRASILIA

AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY COPENHAGEN

AMEMBASSY MOSCOW

AMEMBASSY PRETORIA

AMEMBASSY OSLO

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FOLLOWING REPEAT STATE 98702 ACTION TOKYO 13 MAY.

QUOTE

C O N F I D E N T I A L

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E.O. 11652: NA

TAGS: SEMB, EFIS, JA, US

SUBJECT: WHALING; PELLY AMENDMENT APPLICATION

EMBASSY PASS ARON AND FOX

1. DR. ROBERT M. WHITE, ADMINISTRATOR OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OF THE DEPARTMENT OF COMMERCE, MET WITH DEPARTMENT OFFICIALS MAY 10 TO DISCUSS IMPENDING ACTION BY COMMERCE DEPARTMENT TO RECOMMEND INVOCATION OF PELLY AMENDMENT IN CONNECTION WITH JAPANESE AND SOVIET WHALING ACTIVITIES (C.F. PARA 4). WHITE POINTED OUT THAT HE HAD LITTLE FLEXIBILITY IN IMPLEMENTING THE TERMS OF THE AMENDMENT AND THAT THERE WAS PRESSURE TO MOVE AHEAD AS SOON AS OFFICIAL DATA BECAME AVAILABLE.

2. DEPARTMENT OFFICIALS RECOMMENDED THAT THE SECRETARY OF COMMERCE'S CERTIFICATION TO THE PRESIDENT BE MADE FOLLOWING PRESENTATION OF OFFICIAL DATA IN THE IWC FORUM. IN THE MEANTIME WE WOULD INFORM THE JAPANESE AND SOVIETS OF THE PROBLEM IN THE HOPE THAT THIS WOULD INFLUENCE THEIR RESPONSE TO PROPOSALS MADE AT IWC MEETING TO PROVIDE MORE EFFECTIVE PROTECTION FOR WHALES. IT WAS AGREED TO DEFER A FORMAL CERTIFICATION UNTIL AFTER THE ANNUAL IWC MEETING IN JUNE.

3. FOR EMBASSY'S INFORMATION: TO DATE, NO CERTIFICATION HAS BEEN MADE UNDER PELLY AMENDMENT SINCE ENACTMENT IN

1971. IN THE PAST, WHEN SIMILAR SITUATIONS HAVE ARISEN, AS THEY HAVE IN THE CASE OF THE CANADIAN HADDOCK FISHERY AND THE DANISH HIGH SEAS SALMON FISHERY, AGREEMENT HAS EVENTUALLY BEEN REACHED WITHOUT USE OF THE AMENDMENT, ALTHOUGH IT HAS BEEN ARGUED THAT ITS EXISTENCE WAS INFLUENTIAL IN CAUSING A SETTLEMENT. IF THE PRESIDENT WERE TO RECOMMEND AN EMBARGO IN WHOLE OR IN PART, IT MUST COMPLY WITH ARTICLE XX OF GATT, WHICH REQUIRES THAT SUCH A MEASURE NOT BE APPLIED IN A MANNER WHICH WOULD CONSTITUTE ARBITRARY OR UNJUSTIFIABLE DISCRIMINATION BETWEEN COUNTRIES WHERE THE SAME CONDITIONS PREVAIL OR BE A DISGUISED RESTRICTED OFFICIAL USE

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TION ON INTERNATIONAL TRADE.

4. DEPUTY ASSISTANT SECRETARY SNEIDER CALLED IN DCM YAMAZAKI ON MONDAY, MAY 13, TO INFORM HIM OF THIS PENDING ACTION, AND SOVIET EMBASSY WILL BE SIMILARLY INFORMED LATER THIS WEEK. FOLLOWING POINTS INCLUDED IN SNEIDER'S PRESENTATION:

A) IN VIEW OF THIS SEASON'S WHALE CATCHES BY JAPAN AND THE USSR IN THE ANTARCTIC, THE SECRETARY OF COMMERCE HAS UNDER CONSIDERATION THE QUESTION OF WHETHER HE IS OBLIGED TO ACT UNDER THE TERMS OF THE PELLY AMENDMENT TO THE FISHERMEN'S PROTECTIVE ACT (22 U.S.C. SECTION 1978). THE PELLY AMENDMENT PROVIDES THAT, WHEN THE SECRETARY OF COMMERCE DETERMINES THAT NATIONALS OF A FOREIGN COUNTRY ARE CONDUCTING FISHING OPERATIONS WHICH DIMINISH THE EFFECTIVENESS OF AN INTERNATIONAL FISHERY CONSERVATION PROGRAM, THE SECRETARY SHALL CERTIFY SUCH FACT TO THE PRESIDENT. UPON RECEIPT OF SUCH CERTIFICATION, THE PRESIDENT MAY DIRECT THE SECRETARY OF THE TREASURY TO PLACE AN EMBARGO ON FISH PRODUCTS OF THE OFFENDING COUNTRY. WITHIN SIXTY DAYS AFTER CERTIFICATION, THE PRESIDENT SHALL NOTIFY THE CONGRESS OF ANY ACTION HE HAS TAKEN, OR IF HE HAS TAKEN NO ACTION OR DIRECTED THE IMPOSITION OF A LIMITED EMBARGO, THE REASONS FOR SO DOING.

B) THE PRESENT SITUATION ARISES BECAUSE, AT THE 1973 MEETING OF THE INTERNATIONAL WHALING COMMISSION, THE U.S.S.R. AND JAPAN OBJECTED TO THE QUOTAS ON MINKE AND SPERM WHALES WHICH HAD BEEN DULY ADOPTED BY THE MEMBER COUNTRIES- SUCH OBJECTIONS ARE PERMITTED BY THE TERMS OF THE CONVENTION AND AN OBJECTING COUNTRY IS NOT LEGALLY BOUND TO COMPLY WITH THE QUOTAS OR PROVISIONS OF THE CONSERVATION PROGRAM TO WHICH IT HAS SPECIFICALLY OBJECTED. WITH THE 1973-74 WHALING SEASON IN THE SOUTH ATLANTIC AND SOUTH PACIFIC OCEANS NEARING CONCLUSION, THERE ARE GOOD INDICATIONS THAT BOTH COUNTRIES HAVE TAKEN THESE SPECIES

IN EXCESS OF THE INTERNATIONAL WHALING CONVENTION QUOTAS. IF THESE INDICATIONS ARE CONFIRMED, THE FISHING OPERATIONS WILL IN FACT HAVE DIMINISHED THE EFFECTIVENESS OF THE LIMITED OFFICIAL USE

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IWC'S WHALE CONSERVATION PROGRAM. BOTH THE U.S. MARINE MAMMAL COMMISSION AND STAFF SCIENTISTS IN NOAA CONCUR IN THIS LATTER JUDGMENT.

C. JAPAN IS URGED TO BE AWARE OF THE SERIOUSNESS OF THE SITUATION. THE DEPARTMENT OF COMMERCE HAS NO DISCRETION IN INTERPRETATION OF THE REQUIREMENTS OF THE PELLY AMENDMENT AND MUST CERTIFY THE FACTS TO THE PRESIDENT. DOMESTIC PRESSURES REQUIRE US TO TAKE THE AMENDMENT AND ITS APPLICATION SERIOUSLY. THE WHALING ISSUE IS ONE OF THE MAJOR SUBJECTS OF DEPARTMENT OF STATE MAIL. SENATOR MAGNUSON HAS INTRODUCED IN CONGRESS A RESOLUTION DIRECTING USG CONSIDERATION OF THE APPLICATION OF THE PELLY AMENDMENT, AS WELL AS REVISION OF EXISTING TRADE AGREEMENTS AMONG OTHER THINGS, IN VIEW OF BOTH FISH

AND MARINE MAMMAL CONSERVATION PROBLEMS.

D. WE WILL CONTINUE TO KEEP GOJ AND OTHER CONCERNED PARTIES INFORMED OF OUR VIEWS AND ACTIONS RELATED TO THIS ISSUE. WE WOULD BE INTERESTED TO HAVE A RESPONSE FROM GOJ ON THESE POINTS.

E. THE USG IS CONCERNED THAT THE IWC MEETING THIS JUNE LEAD TO A CONCLUSION WHICH CAN BE SUPPORTED BY ALL SIDES. FAILING THIS, IT WILL BE DIFFICULT TO AVERT THE EFFECTS OF AN APPLICATION OF THE PELLY AMENDMENT. A USG TEAM WILL BE IN TOKYO MAY 16-18 AND WOULD LIKE TO DISCUSS PROSPECTS FOR THE IWC MEETING.

5. EMBASSY IS REQUESTED TO REITERATE OUR CONCERNS TO RESPONSIBLE OFFICIALS AT ALL APPROPRIATE LEVELS.

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